IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10453 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABRA KELAVAQNI MANDAL TRUST THROUGH TRUSTEE

Versus

MADHURIKHBEN JAGJIVANBHAI MIRANI

Appearance:

1. Special Civil Application No. 10453 of 2003

MR PJ KANABAR for Petitioner No. 1-2

MR JD AJMERA for Respondent No. 1-2,4

..... for Respondent No. 3,5-7

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/07/2003

ORAL JUDGEMENT

Heard learned advocate Mr.P.J.Kanabar with learned advocate Mr.Y.J.Jasani on behalf of the

petitioner and learned Advocate Mr.J.D.Ajmera appearing for respondent Nos.1 to 4 on caveat.

#. In the present petition, the petitioner has challenged the order passed by the Gujarat Secondary Education Tribunal at Ahmedabad in Application No.77 / 2000 dated 16th April, 2003, wherein the tribunal has come to the conclusion that the order date 5th February, 2000 which has been passed by the Principal of the School which adverse to the respondents, is contrary to the principles of natural justice, meaning thereby, this order has been passed by the Principal without giving or affording any opportunity of hearing to the respondents. Therefore, short question examined by the tribunal and come to the conclusion that it is well settled position of law that even any administrative orders are also required to be passed in consonance with the principles of natural justice. When three tire pay scale benefit is being cancelled by the school which were enjoyed by respondents last more than 9 years without hearing the respondents, according to the tribunal, such order cannot stand for a moment and on this ground alone deserves to be quashed and set aside. However, the tribunal has made it clear that this order is set aside only on the ground of violation of principles of natural justice and it is kept open for the school management - respondent to pass appropriate orders after hearing the respondents and the respondent would be entitled for the benefits as per the Rules.

#. Learned advocate Mr.Kanabar appearing on behalf of the petitioner, while pointing out the letter dated 18th December, 1999 [which is at page-24] addressed to the Principal of School with a direction that the cases which are pending with the school authority about nine years benefit which has been sanctioned by the Local Fund Office, Amreli and that was granted considering Resolution dated 5th July, 1991. Therefore, considering the Government Resolution dated 16th August, 1994, now it required to be reviewed by the Local Fund Office, Amreli and hence, it was directed to the school authority to produce all the relevant details with pay revision in light of the Government Resolution dated 16th August, 1994 and send to the Local Fund Office, Amreli. Therefore, learned advocate Mr.Kanabar has submitted that in light of this order, higher grade benefit was granted to the respondents and the same has been sanctioned by the District Education Officer. He also submitted that according to the Government Resolution dated 16th August, 1994, before granting the higher grade benefits, nine years' Confidential Reports require to be taken into

account by the respondent authority and thereafter, such benefit has to be granted in favour of such employees. Learned advocate Mr.Kanabar also submitted that there is some fraud committed by the employees, for that, complaint has been filed by the petitioner on 11th February, 1998 and in the said complaint, one of the employees accused, has obtained anticipatory bail from the competent Court. However, it is also the grievance of the petitioner that the petitioner trust is not the party before the Tribunal and therefore, the trust was not able to defend their case before the tribunal properly. He also submitted that there is no need to give any personal hearing or any opportunity of hearing to the respondents before passing the orders dated 5th February, 2000 because they were not entitled as per the Government Resolution dated 16th August, 1994 and therefore, there is no need to given any opportunity to the respondents. He also submitted that the Principal already before the Tribunal, has not represented the case of the management properly and therefore, the tribunal has committed gross error in coming to the conclusion. Except this, no other submission is made by the learned advocate Mr.Kanabar before this Court.

#. Learned advocate Mr.J.D.Ajmera for the respondent Nos.1 to 4 appearing on caveat supported the decision given by the Tribunal that before passing the orders on 5th February, 2000 by the Principal, admittedly no reasonable opportunity was given by the Principal to the respondents and the tribunal has not considered the merits of the matter and there is no need to consider any submissions of the learned advocate Mr.Kanabar in respect of the merits. Learned advocate Mr.Ajmera has also pointed out that the tribunal has kept open the right of the management to pass appropriate orders after giving reasonable opportunity to the respondent school management. Therefore, this order passed by the tribunal, is not even adversely affect the legal right of the respondent school management which has been recognised by the tribunal. Therefore, learned advocate Mr.Ajmera has submitted that the tribunal has rightly passed the order only on the ground of violation of principles of natural justice and for that, the tribunal has not committed any error which requires any interference of this Court while exercising the powers under Articles 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties. It is undisputed between the parties before this Court and not even before the

Tribunal that the Principal of the school before passing the order on 5th February, 2000, any opportunity was not given to the respondent Nos.1 to 4. Thus, it is clear that no opportunity was given by the Principal or by the Management to the respondents before passing the orders on 5th February, 2000 against the respondents. It may be appreciated that the order dated 5th February, 2000 having adverse civil consequences against the respondents while reducing their existing salary, which is also not disputed by the petitioners. The other contentions raised by the learned advocate Mr.Kanabar, the same are on merits of the matter but this Court, at this stage, is not examining the merits of the matter. This Court has to examine legality and validity of the order passed by the Tribunal wherein also, what is considered that whether the principles of natural justice has been followed by the respondent Principal while passing the order on date 5th February, 2000 or not, and answer to this issue has been given by the tribunal in the order impugned before this Court. Therefore, on the aspect of criminal complaint dated 11th February, 1998, this Court is not presently considering the merits of the matter. The another contention raised on the merits of the matter, pertains to C.R as per the Government Resolution dated 16th August, 1994 but the same is not being considered as this Court is not entering into the merits of the matter to decide whether the respondents are entitled to benefits of higher grade or not. Therefore, contentions and submissions made by the learned advocate Mr.Kanabar on merits, worth not accepted by this Court at this stage. So far as the contention that Management was not the party before the Tribunal is concerned, from the cause title itself, it transpires that "Sanchalak / Manager Shri Kanji Pitambar Ashra Girls High School, Mu.Post Babra, District Amreli was the very much party before Tribunal as the respondent No.1. It may also be appreciated that the school is managed by the trust and the Principal is working under the Trust. The Principal has been appointed by the trust and when the Principal is already a party before the tribunal, then the Principal could have raised objection before the tribunal being the respondent that the Trust has not been joined as the party respondent. What transpires from the record that no such objection raised by the Principal before the tribunal. It is also clear from the record that petitioner trust was very much aware about the said proceedings pending before the tribunal in light of some correspondence between the petitioner trust and the principal of the school. In such circumstances, if the petitioner trust was having real grievance for being joined as the party respondent then, the petitioner trust

could have straightaway approached the tribunal for being joined as the party respondent but no such efforts seem to have made by the petitioner nor any application was made by the petitioner trust before the tribunal for being joined as the party respondent in the proceedings pending before the tribunal. Therefore, to raise such contention that the trust petitioner was not the party before the tribunal for the first time before this Court and therefore, the same cannot be accepted. Moveover, the order has been passed by the tribunal on 16th April, 2003 against the respondents school management, but none of the respondent has raised any contention about non joining as necessary party or proper party before the Tribunal. One more important aspect which required to be noted that the tribunal has also not examined the issue involved in the matter on its merits. The contentions raised for the first time before this Court under Articles 226 and 227 and the plea which has not been raised by the petitioners before Tribunal, such plea cannot be allowed to be raised by the petitioner first time before this Court. Such view has been taken by the Apex Court in a decision reported in 2003 [1] LLJ 507. The Apex Court in the aforesaid decision has observed that the plea which was not before the tribunal or the appellate authority, the same cannot be allowed to be raised first time before the High Court or the Supreme Court by the party. Therefore, according to my opinion, such contention which has been raised by the learned advocate Mr.Kanabar cannot be accepted.

#. In light of this fact, when there is no dispute even by the present petitioner before this Court that before passing the orders on 5th February, 2000, reasonable opportunity was not given to the respondents and the said order dated 5th February, 2000 is having adverse effect reducing existing salary of each respondent, even though, no opportunity was given and when it is undisputed fact before this Court and even before the Tribunal, in my opinion, it is obvious that the principles of natural justice has been grossly violated at the time of passing the impugned order.

#. The principle of natural justice is very well settled. In number of decisions, the Apex Court has reiterated this principle from time to time. Some of the decisions are referred as under;

[1] Divisional Superintendent, Eastern Railway, Dinapur and others v. L.N.Kashri and others reported in AIR 1974 SC 1889

[2] Bhagwan Shukla v. Union of India and others
reported in AIR 1994 SC 2480

[3] Savdas Bhovan Julasana V. State of Gujarat
reported in 1996 [2] GCD 382 [Guj]

[4] Shankerlal Nagardas Patel v. Taluka Development
Officer, reported in 1997 [1] GLR 793

However, At this juncture, it is also pertinent to refer the recent decision of the Apex Court on the issue of principle of natural justice in case of CANARA BANK AND OTHERS VS. DEBASIS DAS AND OTHERS reported in 2003 SCC [L& S] 507. The important observations made by the Apex Court in aforesaid decision says as under :

"Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed fro the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

It is further observed that;

"Notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the party determinately of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that

> a party should be put on notice of the case before any adverse order is passed aginst him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time.

#. Therefore, considering the observations made by the Apex Court, according to my opinion, in the present case, when benefit of higher grade has been given to the respondents and the said benefits remained continued for a period of more than nine years and all of sudden, without any notice to the respondents on date 5th February, 2000 vide order passed by the Principal of the petitioner trust, said benefit which was enjoyed by the respondents for pretty long time, has been taken away and the salary of the respondent Nos.1 - 4 has been reduced to such an extent treating them in the initial scale and as a result thereof, recovery of the arrears amount which apparently having civil consequences in reduction of salaries, that too in violation of principle of natural justice is not just and proper as rightly held by the tribunal. Therefore, the act of the Principal of the respondent School Management in passing the order impugned definitely having civil consequences in reducing the salaries and the net effect, turned into, recovery of the arrears and that too, without issuing notice to the respondents, without calling explanation from the respondents, in my opinion, the petitioners failed in discharging their minimum bare requirement of principle of natural justice and also, the order dated 5th February, 2000 passed by the Principal of petitioner is apparently arbitrary with ulterior motive and the same seems to be in vindictive in nature. In my opinion, reasonable opportunity of being heard ought to have been given to the respondent Nos.1 - 4 and therefore,the tribunal has rightly set aside the order dated 5th February, 2000 only on the ground of violation of principle of natural justice and passed legal and valid order, for that, the tribunal has not committed any error which in no way call for any interference of this Court while exercising the powers under Articles 226 and 227 of the Constitution.

In view of above discussion, there is no substance in the present petition and the same does not deserves to be entertained and it is rejected accordingly at the threshold in limine.

Date : 22.7.2003 [H.K.Rathod, J.]

#kailash#